

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel.)	
KIM HOLLAND, Insurance Commissioner,)	
As Receiver of Hospital Casualty Company)	Case No. _____
)	
Plaintiff,)	Oklahoma County District Court
vs.)	Case No: CJ-2006-2350
)	
EMPLOYERS REINSURANCE)	
CORPORATION, a Missouri)	
Corporation)	
Defendant.)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1446, Defendant Employers Reinsurance Corporation (“ERC”) gives notice of removal from the District Court of Oklahoma County, State of Oklahoma, to the United States District Court for the Western District of Oklahoma. In support of this Notice, Defendant states as follows:

1. Plaintiff initiated this action by filing a petition for declaratory judgment and damages in the District Court of Oklahoma County, State of Oklahoma, on March 21, 2006 captioned *State of Oklahoma, ex rel. Kim Holland, Insurance Commissioner, as Receiver of Hospital Casualty Company, Plaintiff, vs. Employers Reinsurance Corporation, a Missouri Corporation, Defendant*; Case No. CJ-2006-2350.

2. A copy of the summons and petition were thereafter served on the Defendant on March 23, 2006.

3. In accordance with 28 U.S.C. § 1446(a) and LCvR 81.2, copies of all process, pleadings, and orders served upon Defendant, as well as a certified copy of the District Court of Oklahoma County, State of Oklahoma, docket sheet of this case are attached to this Notice.

4. Plaintiff seeks damages associated with the litigation of two cases, the Mulbery claim and the Norman Regional Hospital (“NRH”) claim. Plaintiff also seeks damages for breach of an oral contract, a declaratory judgment, and equitable estoppel.

5. Plaintiff alleges breach of contract on the Mulbery claim and seeks damages in excess of \$699,237.17, plus prejudgment interest and attorney fees.

6. Plaintiff also alleges breach of contract on the NRH claim, and seeks damages associated therewith in an amount exceeding \$152,160.08, plus prejudgment interest and attorney fees.

7. Plaintiff seeks a declaratory judgment against ERC on the Mulbery claim for the following:

- a. reimbursement and indemnification of Hospital Casualty Company (“HCC”) for \$498,000 for “loss” paid by HCC to settle claims for punitive damage exposure in the Mulbery claim;
- b. reimbursement and indemnification of \$201,237.17 in “claim expenses” paid by HCC in defense of the Mulbery claim;

8. Plaintiff seeks a declaratory judgment against ERC on the NRH claim for the following:

- a. reimbursement and indemnification of \$152,160.08 for “claim expenses” paid by HCC in the NRH claim and litigation;
- b. allocation of \$1,042,817.85 in available policy limits under the NRH Reinsurance Certificate for the year 2000-2001;
- c. allocation of \$992,280.45 in available policy limits under the NRH Reinsurance Certificate for the year 2001-2001.

9. Plaintiff also alleges breach of an oral contract between NRH, HCC, and ERC, whereby Plaintiff seeks contribution from ERC in an estimated amount of \$2,000,000 (\$1,000,000 in

available limits under the HCC excess policy for 2000-2001, and \$1,000,000 in available limits remaining under the HCC 2001-2002 excess policy).

10. The foregoing allegations, all contained on the face of Plaintiff's complaint, are sufficient in themselves to show that the requisite jurisdictional amount in controversy has been met. *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995); *Lonnquist v. J.C. Penney Co.*, 421 F.2d 597, 599 (10th Cir. 1970)(amount in controversy is ordinarily determined by allegations of the complaint).

11. Defendant ERC is a corporation created under the laws of the State of Missouri and having its primary place of business in the State of Kansas, and is licensed by the Oklahoma Insurance Commissioner to do business in the State of Oklahoma.

12. Plaintiff is a citizen of the State of Oklahoma. In this regard, see *Crawford, Insurance Commissioner for the State of Oklahoma as Receiver for MCA Insurance Co. v. Employers Reinsurance Co.*, 896 F.Supp. 1101 (W.D. Okla. 1995).

12. Thus, pursuant to 28 U.S.C. § 1332(a)(1), this Court has jurisdiction because of the complete diversity of citizenship of the parties and a sufficient amount in controversy.

WHEREFORE, Defendant Employers Reinsurance Corporation requests this Notice of Removal be accepted by this Court, and that the lawsuit proceed as an action properly removed to this Court's jurisdiction.

DATED this 17th day of April, 2006

Respectfully submitted,

s/ Thomas D. Hird

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ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

This is to certify that on the 17th day of April, 2006 a true and correct copy of the above and foregoing instrument was mailed with proper postage thereon fully prepaid to:

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